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101ST CONGRESS
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SENATE

REPORT
101-297

ENROLLING 20 INDIVIDUALS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

MAY 18 (legislative day, APRIL 18), 1990.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 666]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 666) to enroll twenty individuals under the Alaska Native Claims Settlement Act, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

Notwithstanding any other provision of law, the Secretary of the Interior is authorized and directed to enroll the following named individuals as Natives under the Alaska Native Claims Settlement Act (Public Law 92-203): Marilyn Jean (Warren) Sanchez, Theresa A. (Warren) Forbes, Linda (Graham) Raymond, Carol (Graham) Kistler, Debra (Sellers) Page, Glenn Sellers, David P. Schmalzried, Odman H. Schmalzried, Carol Guzialek, Corbin Kooly, Charmaine I. (Warren) Forbes, John A. Warren, Jr., Phillip Graham, Sharon (Graham) Skinner, Wanda (Sellers) Clancy, Georgia A. (Schmalzried) Flood, Rhonda S. (Schmalzried) Koski, Paula (Guzialek) Smith, Pamela Kooly, and Darrell Kooly. Each individual is entitled to receive one hundred shares of stock in Cook Inlet Region, Inc., and such other benefits as the board of Directors of that corporation may approve. No individual enrolled pursuant to this Act shall be entitled to share in any dividends or Alaska Native Claims Settlement Act distributions made by the United States or Cook Inlet Region, Inc. prior to the individual's enrollment. Enrollment of these individuals shall not alter the entitlement to or distribution of land to Cook Inlet Region, Inc. under the terms of the Alaska Native Claims Settlement Act.

39-010

S313-15

PURPOSE OF THE MEASURE

The purpose of S. 666, as ordered reported, is to enroll twenty individuals as Natives in Cook Inlet Region, Inc. under the provisions of the Alaska Native Claims Settlement Act.

BACKGROUND AND NEED

The Alaska Native Claims Settlement Act (Public Law 92-203, 43 U.S.C. 1601 et seq.) established a 2-year period from 1971 to 1973 during which the Secretary of the Interior was directed to enroll all Natives in Alaska. The term "Native" is defined in ANCSA to mean "a citizen of the United States with one-fourth degree or more Alaska Indian, Eskimo, or Aleut blood, or combination thereof." The definition also includes as Native, "in the absence of proof of a minimum blood quantum, any citizen of the U.S. who is regarded as Native by the Native village or Native group of which he claims to be a member."

The 20 individuals to be enrolled as Natives pursuant to this legislation are the grandchildren of an Alaska Native who is a member of the Cook Inlet Regional Corporation. The individuals first applied for enrollment under ANCSA in 1972 and 1973. At that time the Bureau of Indian Affairs rejected their application based on a finding that their grandmother was not a full-blooded Native, so that the grandchildren possessed less than the required 25 percent blood quantum. The grandchildren's appeal of the decision was also denied in 1974. Nine of the grandchildren reapplied for enrollment under the provisions of Public Law 94-204, which extended the enrollment period in 1976. Their new application was denied in 1979.

In 1984, the BIA Alaska Regional Solicitor reversed his earlier finding and ruled that the evidence of blood proof was inconclusive as whether the 20 individuals were qualified for enrollment, and that they should be enrolled if they could produce statements of acceptance from the Native regional and/or village corporations. In 1987, the Assistant Secretary for Indian Affairs vacated the Regional Solicitor's 1984 finding on the grounds that the Solicitor did not have the authority to reconsider the issue of eligibility.

Since the administrative enrollment period is now closed, Federal legislation is the only way that these individuals can be enrolled. Enrollment of these individuals will not adversely affect any other enrolled Natives and the Committee has received testimony from the regional corporation in which the individuals would be enrolled—Cook Inlet Region, Inc.—supporting the legislation as reported by the Committee.

LEGISLATIVE HISTORY

S. 666 was introduced by Senator Murkowski on March 17, 1989. The Subcommittee on Public Lands, National Parks and Forests held a hearing on the bill on March 6, 1990.

At the business meeting on April 25, 1990, the Senate Committee on Energy and Natural Resources ordered S. 666, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on April 25, 1990, by a unanimous vote of a quorum present, recommends that the Senate pass S. 666, if amended as described herein.

The roll call vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers*	
Mr. Ford	
Mr. Metzenbaum*	
Mr. Bradley*	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad*	
Mr. Heflin*	
Mr. Rockefeller*	
Mr. McClure	
Mr. Hatfield*	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Garn	
Mr. McConnell	

*Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of S. 666, the Committee adopted an amendment in the nature of a substitute. The amendment provides that notwithstanding any other provision of law, the 20 individuals listed in the bill are to be enrolled as Natives under the terms of the Alaska Native Claims Settlement Act. Each individual is to be issued 100 shares of stock in Cook Inlet Region, Inc. As introduced, S. 666 enrolled the individuals in both the Cook Inlet regional corporation and the Kenai Natives Association. The amendment adopted by the Committee limits the enrollment of the individuals to the regional corporation only.

The amendment also provides that the individuals enrolled by this Act shall not be entitled to share in any dividends or distributions made prior to their enrollment. Finally, the amendment makes clear that enrollment of the 20 individuals shall not alter the entitlement to, or distribution of land to Cook Inlet Region, Inc. under the terms of the Alaska Native Claims Settlement Act.

SUMMARY OF THE MEASURE

S. 666 authorizes and directs the Secretary of the Interior to enroll twenty named individuals as Natives under the Alaska Native Claims Settlement Act (ANCSA), entitling each individual to receive 100 shares of stock in Cook Inlet Region, Inc. (CIRI). The

bill also states that no individual enrolled pursuant to this Act is entitled to share in any dividends or ANCSA distributions made by the United States or CIRI prior to the individual's enrollment. Finally, the bill provides that enrollment of the individuals by this Act shall not alter the entitlement to or distribution of land to CIRI under the terms of ANCSA.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 11, 1990.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 666, a bill to enroll 20 individuals under the Alaska Native Claims Settlement Act, as ordered reported by the Senate Committee on Energy and Natural Resources, April 25, 1990. CBO estimates that enactment of this bill would result in no cost to the federal government or to state and local governments.

S. 666 would enroll 20 people in the Alaska Native Claims Settlement Act (ANCSA), thereby entitling them to shares in the Cook Inlet Region, Inc. (CIRI). As shareholders of CIRI, they would share in the future benefits and earnings of the corporation. S. 666 would not entitle these individuals to shares in any prior benefits provided under ANCSA.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
(for Robert D. Reischauer).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 666. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 666, as reported.

EXECUTIVE COMMUNICATIONS

On January 18, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of Interior and the Office of Management and Budget setting forth executive views on S. 666. These reports had not been received at the time the report on S. 666 was filed. When the reports become avail-

able, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Indian Affairs at the Subcommittee hearing follows:

STATEMENT OF WALTER R. MILLS, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (OPERATIONS), DEPARTMENT OF THE INTERIOR

Good morning Mr. Chairman and Members of the committee. I am pleased to be here to discuss S. 666, a bill to enroll 20 individuals under the Alaska Native Claims Settlement Act.

We oppose enactment of S. 666, a bill that proposed to enroll the 20 named individuals in the Act as Natives under the Alaska Native Claims Settlement Act (ANCSA). (43 U.S.C. 1601 et seq.) Enrollment would make these individuals members of the Kenai Native Association (KNA) and Cook Inlet Region, Inc. (CIRI). This issue was previously researched by the Department and the final determination found that the subject individuals did not meet the eligibility requirements for enrollment under ANCSA. While we understand there originally may have been support for this legislation by the concerned corporations, KNA has made it clear at this time that they do not support the legislation.

Section 4 of the ANCSA amendment Act of 1987 (43 U.S.C. 1606(g)) provides authorization for the Alaska corporations to amend their Articles of Incorporation to issue shares of stock to individuals eligible for enrollment under ANCSA but who were not enrolled. Therefore, we believe this issue could now be dealt with by KNA and CIRI if these 20 individuals were eligible for enrollment.

Section 5 of the Alaska Native Claims Settlement Act directed the Secretary of the Interior to establish an Alaska Native Roll of those found eligible to participate in the Act. The Act reads as follows:

> The Secretary shall prepare within two years from the date of enactment of this Act [enacted Dec. 18, 1971] a roll of all Natives who were born on or before, and who are living on, the date of enactment of this Act. Any decision of the Secretary regarding of [sic] eligibility for enrollment shall be final.

Alaska was divided into 12 geographic regions with each region made up of Natives having a common heritage and sharing common interests. A thirteenth region was established for Natives who were not living in Alaska but wished to be enrolled and subsequently establish a corporation pursuant to this Act.

These 12 Reginal Corporations and the over 200 village corporations were given selection rights and eventual title to about 44 million acres of lands within their geographic region. The corporations were authorized to issue shares of common stock, divided into such classes of shares as may be specified to reflect the provisions of the Act, so that each enrollee received one hundred shares of stock.

The Act established the Alaska Native Fund to be distributed among the regional corporations based on the relative number of Natives enrolled in each region.

Regulation procedures for applications, eligibility, and decisions were published in the Federal Register in March of 1972 as 25 CFR Part 43h and later redesignated in 25 CFR Part 69. The Act originally required the Native roll to be completed by December of 1973, therefore, the Department set its deadline for all applications to be submitted by March 30, 1973. A number of eligible persons failed to apply within the deadline so in 1976, Congress amended ANCSA to provide an additional year in which to apply for those who had missed the earlier deadline. Additional enrollment applications were accepted until July 2, 1977. The BIA interpreted this provision as permitting those to reapply who were denied eligibility under the first application process.

The definition of "Native" as set forth in the Act was adopted nearly word for word by the Department in its regulations. The definition language of the term "Native" as found in the Department's publication is as follows:

> "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Eleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

The regulations provided an appeal process for applicants who had been denied enrollment by the Bureau of Indian Affairs (BIA). Applicants receiving adverse decisions could appeal to the Regional Solicitor within 30 days of receipt of the decision.

The Regional Solicitor was authorized to review appeals and set up a procedure whereby the appellant could review the final decision of the Solicitor within 30 days of the issuance. If the Solicitor's decision denied enrollment, the appellant was then allowed to submit further evidence to support the appeal. At the conclusion of the review of the additional evidence, the solicitor would issue a final decision.

The 20 individuals named in the bill applied for enrollment on the Alaska Native roll in 1972 and 1973. These individuals were denied enrollment in 1973 or 1974 based on a determination that they were less than one-fourth degree Alaska Native blood. These persons were relying on the blood quantum of their grandmother to establish their Native heritage. Unfortunately, the grandmother was found not to be a fullblood Alaska Native. All members of this group appealed the adverse decisions and all were denied enrollment in 1974. Nine of the family members reapplied for enrollment under the late enrollment provisions of the Act of January 2, 1976, (43 U.S.C. 1604 et seq.) They were again denied enrollment in 1979

for lack of Native ancestry. Seven of those nine applicants appealed to the Regional Solicitor and were denied enrollment in 1980.

Finally, in a July 29, 1981, memorandum from the Regional Solicitor, the BIA was notified that all appeals had been decided. Relying on this memorandum, the Associate Solicitor, Indian Affairs, Department of the Interior, informed the BIA that it could distribute the special escrow fund that had been set aside for enrollment appeals. On December 10, 1981, final distribution of the Alaska Native Fund was made to the ANCSA regional corporations.

On February 6, 1984, without informing the BIA, the Alaska Regional Solicitor accepted a request for reconsideration of enrollment from one of the twenty individuals named in the bill. The complete enrollment record was not requested from the BIA by the Regional Solicitor to consider in review of the request for consideration. Instead, findings were based on a brief submitted by a counsel for one of the individuals, and an informal meeting with certain members of the family.

Based on these limited findings, the Regional Solicitor concluded in a decision rendered on September 7, 1984, that earlier determinations of blood degree were erroneous and that an affidavit could be accepted from the Kenai Native Association as a basis for enrollment. The affidavit which was filed on September 23, 1984, was signed by the President of the Kenai Native Association. We do not know if the affidavit was formally authorized at the time by the Board of Directors or the stockholders. However, the Board of Directors, on November 3, 1989, voted to oppose enactment of S. 666.

After reviewing the complete record, the BIA continued to support its findings of non-eligibility for enrollment. An oral response from the Office of the Solicitor, Department of the Interior, declared that the Regional Solicitor lacked the authority to reconsider the eligibility of the subject individuals. The Assistant Secretary—Indian Affairs again reviewed the case to determine if he should utilize whatever authority he might have to grant an equitable solution for these individuals. However, he concluded the facts clearly showed that these individuals were not eligible for enrollment on the Alaska Native roll. As a result, the BIA declined to enroll them. On September 4, 1985, one of the individuals wrote to the Secretary requesting that he direct the enrollment of the family.

The Department conducted an extensive review of the issue and as a result, the Assistant Secretary—Indian Affairs, on December 22, 1987, vacated the Regional Solicitor's decision because the Regional Solicitor lacked the authority to undertake reconsiderations after the enrollment and appeals processes were completed. The Assistant Secretary—Indian Affairs in a final action for the Department, declared the 20 individuals ineligible and denied their request for enrollment.

The reenrollment of the 20 individuals is currently the subject of litigation in the case of *Flood* v. *Bureau of Indian Affairs*, No. A87-412, in the United States District Court for the District of Alaska.

We are also concerned that no provision in the bill protects the United States or the corporations for past distributions of funds

from the Alaska Native Fund and corporation dividends. In addition, there should be a provision in the bill providing that any such enrollment would not affect land entitlements or distributions.

We believe it inappropriate to support legislation to enroll individuals whom the Department has determined are not eligible. This could set a precedent that would encourage requests by other individuals denied enrollment for special consideration of their cases.

This concludes my prepared statement. I will be happy to answer any questions you may have. Thank you, Mr. Chairman.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 666, as reported.

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